

SENATE BILL REPORT

SB 5964

As of February 22, 2009

Title: An act relating to asbestos-related liabilities and consumer and worker injuries.

Brief Description: Concerning asbestos-related liabilities and consumer and worker injuries.

Sponsors: Senators McDermott, Hargrove, Tom and Shin.

Brief History:

Committee Activity: Labor, Commerce & Consumer Protection: 2/23/09.

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Staff: Alison Mendiola (786-7483)

Background: Under Washington's Business Corporation Act, when one or more corporations formally merge, the surviving, or successor, corporation is subject to the debts and liabilities of each predecessor corporation absorbed in the merger.

The increased number of asbestos-related claims in Washington State threaten successor companies uniquely situated in that they have never manufactured, sold, or distributed asbestos or asbestos products and are liable strictly as successor corporations. Since the 1970s, thousands of asbestos-related injury claims have been filed in courts across the nation. The American Legislative Exchange Council has drafted model legislation regarding successor asbestos-related liability. The model legislation limits the total financial liability of a successor corporation to an amount equal to the predecessor's total gross assets.

Under the Restatement (Second) of Torts §388, a manufacturer has a duty to warn of the hazards involved in the use of the product that are or should be known to the manufacturer. The State Supreme Court recently ruled that a manufacturer does not have an obligation to warn of the dangers of another manufacturer's product. *Simonetta v. Viad Corp.*, No. 80076-6, 2008 WL 5175068 (Dec. 11, 2008) see also; *Braaten v. Saberhagen Holdings*, No. 80251-3, 2008 WL 5175083 (Dec. 11, 2008). Although the Court of Appeals previously held that when a product requires the use of another product and the two together cause a release of hazardous substance, the manufacturer has a duty to warn about the inherent dangers. *Simonetta v. Viad Corporation*, 137 Wn. App. 15 (2007), linked with *Braaten v. Saberhagen Holdings*, 137 Wn. App. 32 (2007).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Summary of Bill: A corporation that assumed or incurred asbestos-related liabilities due to a merger or consolidation with a predecessor corporation on or before January 1, 1972, has limited asbestos-related liabilities. The limited liability does not apply if the successor corporation, after the merger or consolidation, continued in the business of mining, selling, distributing, removing, or installing asbestos-containing products which were substantially the same as the predecessor's products.

The cumulative successor asbestos-related liabilities of a corporation are limited to the fair market value of the predecessor corporation's total gross assets. The fair market value is determined at the time the corporations merged or consolidated and includes an annual adjustment based on the prime rate of each year after merger or consolidation, plus 1 percent. Once the limit is reached, the successor corporation does not have any responsibility for successor asbestos-related liabilities in excess of that limit.

When a product requires the use of asbestos or an asbestos-containing substance for the product to function as designed, or when a manufacturer should reasonably anticipate the use of asbestos, or an asbestos-containing substance with its product for the product to properly function, and the product and asbestos or asbestos-containing substance together create an unreasonable risk or harm to the user, the manufacturer of the product has a duty to warn the user of the risks of harm involved in the use of asbestos or the asbestos-containing substance in its product.

This Act applies to all causes of action filed before December 11, 2008, and to all causes of action filed on or after the effective date of this Act.

Appropriation: None.

Fiscal Note: Requested on February 19, 2009.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.